

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA, et al.,	:	CASE NO.: 1:02-cv-00107
	:	
	:	
Plaintiffs,	:	JUDGE S. ARTHUR SPIEGEL
	:	MAGISTRATE HOGAN
v.	:	
	:	RESPONSE TO JENKINS
	:	REQUEST FOR REVIEW
BOARD OF HAMILTON COUNTY COMMISSIONERS, et al.	:	
	:	
	:	
Defendants.	:	

The City and County Defendants ("MSD") respond to Kelvin Jenkins Motion for Review (Doc #172) as follows:

1. The MSD investigated Mr. Jenkins' claim through the City of Cincinnati's claims office. At that time the Claims Administrator was Anita Boulmetis.
2. Ms. Boulmetis responded to Mr. Jenkins' May 31, 2005 claim in a letter dated July 21, 2005, including an affidavit and settlement release for Mr. Jenkins' signature. (Attached as Exhibit A).
3. MSD determined that Mr. Jenkins' backup was caused by an overload of the main sewer. Thus, the property was eligible for damages through the WIB program.
4. The MSD took several pictures of Mr. Jenkins partially finished basement. (Photographs attached as Exhibit B). These pictures show a partially remodeled basement, not a completely remodeled basement.
5. Mr. Jenkins submitted an estimate from Able Services, which included an estimate to remodel the entire basement including areas not finished prior to the

WIB. (Estimate attached to Jenkins Motion, Doc#172). To date, based on information and belief, the estimate has not been fulfilled, nor has the property been restored.

6. Arthur Harmon represents Mr. Jenkins in this matter and submitted a demand for \$ 44,421.53 for settlement of Mr. Jenkins claim. (Attached as Exhibit c).

7. Based on Ms. Boulmetis' review, the repairs estimated were never completed, and constitute an estimate for the remodeling of the entire basement, not just the areas damaged.

8. The City of Cincinnati made a final settlement offer to Mr. Jenkins of \$13,280.00 in a letter dated March 23, 2006. (Attached as Exhibit D). The City made this offer based on its estimate of the extent of damages to repair the partially remodeled basement, not an entire new basement.

9. Mr. Jenkins' appraiser, David Beard, estimated the loss of fair market value as \$2000. (Attached to Doc. #172). In Ohio, if real property is permanently damaged, the measure of damage is the difference in the fair market value of the property immediately before and immediately after the damage occurred.

10. As set forth by Mr. Jenkins' own appraisal, the loss in value is far less than the cost of repairs (\$2000 vs. \$28,921.53). Mr. Jenkins should be limited to the lesser of either temporary repair damages for his partial basement or his claimed permanent damages (\$2000). The City's offer (\$13,280.00) exceeds the loss of value and fairly compensates Mr. Jenkins for a partial remodeling of his basement.

Accordingly, the MDS defendant request that Mr. Jenkins' Request for Review be denied and that the City be allowed to tender its settlement for \$13,280.00.

Respectfully submitted,

JULIA L. MCNEIL (0043535)
City Solicitor

/s/ Terrance A. Nestor

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CERTIFICATE OF SERVICE

I hereby certify on May 21, 2007 a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Terrance A. Nestor

Terrance A. Nestor (0065840)
Sr. Assistant City Solicitor